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U.S. Bank National Association

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

U.S. BANK NATIONAL
ASSOCIATION, a national banking
association,

Plaintiff,

v.

GOLD DIGGER APPLES, INC., a
Washington corporation; KERNAN
ORCHARDS, INC., a Washington
corporation, CARBON CYCLE
CRUSH LLC, a Washington limited
liability company; OROVILLE
REMAN & RELOAD, INC., a
Washington corporation; and JOHN
DOE,

Defendants.

Case No.

COMPLAINT

Comes now U.S. Bank National Association ("U.S. Bank") and for
causes of action against defendants alleges:

I. STATUS OF PARTIES AND JURISDICTION

1.1 Status of Plaintiff. Plaintiff U.S. Bank is a national banking
association resident in the state of Ohio. U.S. Bank is the holder of the promissory

1 notes, mortgagee under the mortgages, and grantee of the security interests
2 described below and is authorized to conduct business in the state of Washington.

3 1.2 Status of Defendants.

4 1.2.1 Gold Digger Apples, Inc. Gold Digger Apples, Inc.
5 ("GDA") is a Washington corporation with a registered office and principal place
6 of business in Oroville, Okanogan County, Washington. GDA is the maker of the
7 promissory notes, grantor under a mortgage on real property, and grantor of the
8 security interest in personal property as described below.

9 1.2.2 Kernan Orchards, Inc. Kernan Orchards, Inc. ("Kernan")
10 is a Washington corporation with a registered office and principal place of business
11 in Oroville, Okanogan County, Washington. Kernan is the grantor of a mortgage
12 on real property as described below.

13 1.2.3 Carbon Cycle Crush LLC. Carbon Cycle Crush LLC
14 ("CCC") is a Washington limited liability company with a registered office and
15 principal place of business in Spokane Valley, Spokane County, Washington.
16 CCC is a lessee of real property described below.

17 1.2.4 Oroville Reman & Reload, Inc. Oroville Reman &
18 Reload, Inc. ("ORR") is a Washington corporation with a registered office and
19 principal place of business in Oroville, Okanogan County, Washington. ORR is a
20 lessee of real property described below.

21 1.2.5 John Doe. John Doe may hold a security interest in
22 personal property junior to the security interest of U.S. Bank and is a citizen of the
23 state of Washington.

24 1.3 Jurisdiction and Venue. The Court has original jurisdiction of
25 this action pursuant to 28 U.S.C. § 1332. Plaintiff U.S. Bank is a citizen of the
26 state of Ohio. Each defendant is a citizen of the state of Washington. U.S. Bank is

not from the same state as GDA, Kernan, CCC, ORR, or John Doe, and therefore, there is complete diversity between the parties. The matter in controversy exceeds the sum or value of \$75,000. The Court has personal jurisdiction over GDA, Kernan, CCC, ORR, and John Doe. GDA, Kernan, CCC, ORR, and John Doe have purposefully engaged in substantial business and related communications with U.S. Bank, and the claims arise from their transaction of business within this district. Venue is proper under 28 U.S.C. § 1391. A substantial portion of the activities giving rise to U.S. Bank's claims have taken place in this district. Each of GDA, Kernan, CCC, ORR, and John Doe maintains its principal place of business and/or conducts business activities in this district.

II. UNDERLYING FACTS

2.1 Execution of the Second Amended and Restated Credit Agreement. On or about June 18, 2014, U.S. Bank and GDA executed the Second Amended and Restated Credit Agreement (the "Loan Agreement"). A true copy of the Loan Agreement is attached hereto as Exhibit 1.

2.2 2014 Orchard Loan. On or about June 18, 2014, pursuant to the Loan Agreement, GDA executed and delivered to U.S. Bank that certain Promissory Note (2014 Orchard Loan) in the principal sum of \$5,035,000.00 (the "2014 Orchard Loan"). A true copy of the 2014 Orchard Loan is attached hereto as Exhibit 2.

2.3 Term Note. On or about June 18, 2014, pursuant to the Loan Agreement, GDA executed and delivered to U.S. Bank that certain Amended and Restated Promissory Note (Term Loan) in the principal sum of \$7,875,779.02 (the "Term Loan"). A true copy of the Term Loan is attached hereto as Exhibit 3.

2.4 PIK Interest Note. On or about June 18, 2014, pursuant to the Loan Agreement, GDA executed and delivered to U.S. Bank that certain Amended

1 and Restated Promissory Note (PIK Interest Loan) in the principal sum of
 2 \$2,058,044.94 (the "PIK Interest Loan"). A true copy of the PIK Interest Loan is
 3 attached hereto as Exhibit 4.

4 2.5 Execution of the Security Agreement. On or about June 18,
 5 2014, pursuant to the Loan Agreement, GDA executed and delivered to U.S. Bank
 6 that certain Security Agreement in order to secure the Obligations (as defined in
 7 the Credit Agreement, including without limitation the obligations thereunder and
 8 in the 2014 Orchard Loan, the Term Loan, and the PIK Interest Loan). Under the
 9 Security Agreement, GDA granted U.S. Bank a security interest in the Collateral as
 10 defined therein. A true copy of the Security Agreement is attached hereto as
 11 Exhibit 5.

12 2.6 UCC Filings. U.S. Bank is the secured creditor and the
 13 assignee of secured creditors under UCC financing statements filed as early as
 14 August 4, 1989, and multiple filings and amendments thereafter (the "Financing
 15 Statements"), which currently remain in effect and describe the Collateral. True
 16 copies of the Financing Statements are attached hereto as Exhibit 6. By virtue of
 17 the Financing Statements, U.S. Bank has a perfected security interest in the types
 18 of Collateral in which a security interest is perfected by filing.

19 2.7 GDA Mortgage Amendment. On or about February 2, 1998,
 20 GDA and Oro Fruit Company ("Oro"), a Washington corporation, granted that
 21 certain Mortgage to U.S. Bank, recorded on February 10, 1998, in the records of
 22 the Okanogan County Auditor under instrument number 862066 (vol. 164 page
 23 1892) (the "GDA Mortgage") to secure certain obligations under a promissory note
 24 from GDA to U.S. Bank dated February 2, 1998, in the principal amount of
 25 \$6,000,000.00. Oro has not been an active Washington corporation since January
 26 25, 1999, and title is now vested entirely in GDA. A true copy of the GDA

1 Mortgage is attached hereto as Exhibit 7. On or about June 17, 2014, GDA and
 2 U.S. Bank entered into an Amendment of Mortgage, recorded on June 17, 2014, in
 3 the records of the Okanogan County Auditor under instrument number 3192389
 4 (the "GDA Mortgage Amendment") to reflect that the GDA Mortgage continued to
 5 secure all amounts owed by GDA to U.S. Bank, including the 2014 Orchard Loan,
 6 the Term Loan, the PIK Interest Loan, and two other promissory notes in the
 7 principal amount of \$3,000,000.00 each, and any replacements thereof. A true
 8 copy of the GDA Mortgage Amendment is attached hereto as Exhibit 8. The GDA
 9 Mortgage encumbers the real property described in the GDA Mortgage
 10 Amendment.

11 2.8 Kernan Mortgage Amendment. On or about May 19, 2000,
 12 Kernan granted that certain Mortgage to U.S. Bank, recorded on June 12, 2000, in
 13 the records of the Okanogan County Auditor under instrument number 3023290
 14 (the "Kernan Mortgage") to secure certain obligations under a promissory note
 15 from GDA to U.S. Bank dated May 19, 2000, in the principal amount of
 16 \$846,000.00. A true copy of the Kernan Mortgage is attached hereto as Exhibit 9.
 17 On or about June 17, 2014, Kernan and U.S. Bank entered into an Amendment of
 18 Mortgage (Kernan Orchards), recorded on June 17, 2014, in the records of the
 19 Okanogan County Auditor under instrument number 3192388 (the "Kernan
 20 Mortgage Amendment") to reflect that the Kernan Mortgage continued to secure
 21 all amounts owed by GDA to U.S. Bank, including the 2014 Orchard Loan, the
 22 Term Loan, the PIK Interest Loan, and two other promissory notes in the principal
 23 amount of \$3,000,000.00 each, and any replacements thereof. A true copy of the
 24 Kernan Mortgage Amendment is attached hereto as Exhibit 10. The Kernan
 25 Mortgage encumbers the real property described in the Kernan Mortgage
 26 Amendment.

1 2.9 First Amendment to Credit Agreement. On or about February
 2 18, 2015, GDA and U.S. Bank entered into that certain First Amendment to
 3 Second Amended and Restated Credit Agreement and Waiver Agreement (the
 4 "First Amendment"). A true copy of the First Amendment is attached hereto as
 5 Exhibit 11. Among other things, the First Amendment effected the extension of
 6 the maturity date of the 2014 Orchard Loan Note to April 15, 2015.

7 2.10 Second Amendment to Credit Agreement. On or about April
 8 15, 2015, GDA and U.S. Bank entered into that certain Second Amendment to
 9 Second Amended and Restated Credit Agreement (the "Second Amendment"). A
 10 true copy of the Second Amendment is attached hereto as Exhibit 12. The Second
 11 Amendment provided for GDA to execute two new promissory notes to replace the
 12 two \$3,000,000.00 notes referenced in the GDA Mortgage Amendment and the
 13 Kernan Mortgage Amendment.

14 2.11 2015 Warehouse Note. On or about April 15, 2015, pursuant to
 15 the Second Amendment, GDA executed and delivered to U.S. Bank that certain
 16 Promissory Note (Warehouse Loan) in the principal sum of \$3,000,000.00 (the
 17 "Warehouse Loan"). A true copy of the 2015 Warehouse Note is attached hereto
 18 as Exhibit 13.

19 2.12 2015 Orchard Note. On or about April 15, 2015, pursuant to
 20 the Second Amendment, GDA executed and delivered to U.S. Bank that certain
 21 Promissory Note (2015 Orchard Loan) in the principal sum of \$5,600,000.00 (the
 22 "2015 Orchard Loan"). A true copy of the 2015 Orchard Loan is attached hereto as
 23 Exhibit 14.

24 2.13 Defaults. GDA defaulted on its Obligations (as defined in the
 25 GDA Mortgage and the Kernan Mortgage) to U.S. Bank by, among other things,
 26 failing to pay when due amounts owing under the promissory notes. The 2014

Orchard Loan matured and became fully due and payable on November 30, 2015; the 2015 Orchard Loan and the Warehouse Loan, on December 15, 2015. The failure to pay in full on the maturity date all amounts due under the 2014 Orchard Loan, the 2015 Orchard Loan, and the Warehouse Loan constituted an Event of Default under Section 13.1(a) of the Loan Agreement. As a result of the Event of Default, U.S. Bank declared each of the Term Note and the PIK Interest Note immediately due and payable pursuant to Section 13.2 of the Loan Agreement. As permitted by Section 13.2 of the Loan Agreement, interest on the full outstanding balance of each of the 2014 Orchard Loan, the 2015 Orchard Loan, the Warehouse Loan, and the Term Loan began to accrue at the Default Rate (as defined in the Loan Agreement), and interest on the full outstanding balance of the PIK Interest Loan began to accrue and be payable at the Prime Rate plus 7.25 percent per annum. On March 4, 2016, U.S. Bank delivered a Notice of Event of Default to GDA to the foregoing effect. A true copy of the Notice of Event of Default is attached hereto as Exhibit 15. GDA has not satisfied its Obligations to U.S. Bank.

2.14 Amounts Due Under the Notes. Because of the defaults by GDA, there is owing under the notes the following amounts:

2.14.1 2014 Orchard Loan: The principal amount of \$1,941,848.80, plus accrued and unpaid interest as of May 10, 2016, in the amount of \$6,405.40. Interest continues to accrue on and after May 10, 2016, at the per diem rate of \$256.21616.

2.14.2 Term Loan: The principal amount of \$7,531,332.32, plus accrued and unpaid interest as of May 10, 2016, in the amount of \$28765.51. Interest continues to accrue on and after May 10, 2016, at the per diem rate of \$1,150.62022.

1 2.14.3 PIK Interest Loan: The principal amount of
 2 \$2,058,044.94, plus accrued and unpaid interest as of May 10, 2016, in the amount
 3 of \$27,769.31. Interest continues to accrue on and after May 10, 2016, at the per
 4 diem rate of \$414.46738.

5 2.14.4 2015 Orchard Loan: The principal amount of
 6 \$14,058,000.00, plus accrued and unpaid interest as of May 10, 2016, in the
 7 amount of \$13,385.76. Interest continues to accrue on and after May 10, 2016, at
 8 the per diem rate of \$535.43056.

9 2.14.5 Warehouse Loan: The principal amount of
 10 \$2,996,480.00, plus accrued and unpaid interest as of May 10, 2016, in the amount
 11 of \$9,877.25. Interest continues to accrue on and after May 10, 2016, at the per
 12 diem rate of \$395.36889.

13 2.15 Attorneys' Fees and Costs. The terms of the Loan Agreement,
 14 2014 Orchard Loan, Term Loan, PIK Interest Loan, 2015 Orchard Loan,
 15 Warehouse Loan, GDA Mortgage, and Kernan Mortgage provide for U.S. Bank to
 16 be entitled to an award of its costs, fees, and out-of-pocket disbursement, including
 17 attorneys' fees, in collecting on the Obligations and protecting the interests
 18 provided by the GDA Mortgage and the Kernan Mortgage. As of May 10, 2016,
 19 U.S. Bank has expended no less than \$295,054.54 in fees and costs in collecting on
 20 the obligations of GDA and protecting the interests provided by the GDA
 21 Mortgage and the Kernan Mortgage that has not been repaid.

22 **III. FORECLOSURE OF REAL PROPERTY** 23 **(Against All Defendants)**

24 3.1 U.S. Bank realleges paragraphs 1.1 through 2.15 above as if set
 25 forth in full herein.

3.2 No suit has been instituted or is now pending on the 2014 Orchard Loan, Term Loan, PIK Interest Loan, 2015 Orchard Loan, or Warehouse Loan.

3.3 As a result of GDA's defaults under the 2015 Orchard Loan, Term Loan, PIK Interest Loan, 2015 Orchard Loan, and Warehouse Loan, U.S. Bank is entitled to a judgment foreclosing its interest in the Real Property (as defined in each of the GDA Mortgage and the Kernan Mortgage) and directing the sale of the Real Property with the proceeds of the sale to be applied to Obligations as provided by applicable law.

3.4 The interests of all of the defendants, and all persons claiming by, through, or under them, in the Real Property are junior, inferior, and subordinate to the interest of U.S. Bank.

3.5 If any additional parties claiming an interest in and to the Real Property junior to the U.S. Bank's lien have been inadvertently omitted, U.S. Bank reserves the right to add such parties as additional defendants and to have their rights and interests adjudicated herein.

3.6 None of the defendants are entitled to possession of the Real Property during the period of redemption following the sheriff's sale. The purchaser at the sheriff's sale will be entitled to the sole and exclusive possession of the Real Property.

3.7 U.S. Bank hereby seeks a deficiency judgment in this action against GDA.

IV. FORECLOSURE OF PERSONAL PROPERTY (COLLATERAL)
(Against Defendant GDA)

4.1 U.S. Bank realleges paragraphs 1.1 through 3.7 above as if set forth in full herein.

1 4.2 As a result of GDA's defaults under the 2015 Orchard Loan,
2 Term Loan, PIK Interest Loan, 2015 Orchard Loan, and Warehouse Loan,
3 U.S. Bank is entitled to a judgment foreclosing its interest in the Collateral (as
4 defined in the Security Agreement) and directing the sale of the Collateral with the
5 proceeds of the sale to be applied to Obligations as provided by applicable law.

6 4.3 The interests of all of the defendants, and all persons claiming
7 by, through, or under them, in the Collateral are junior, inferior, and subordinate to
8 the interest of U.S. Bank.

9 4.4 If any additional parties claiming an interest in and to the
10 Collateral junior to the U.S. Bank's lien have been inadvertently omitted, U.S.
11 Bank reserves the right to add such parties as additional defendants and to have
12 their rights and interests adjudicated herein.

13 4.5 The purchaser at the sheriff's sale or other disposition will be
14 entitled to the sole and exclusive possession of the Collateral.

15 4.6 U.S. Bank hereby seeks a deficiency judgment in this action
16 against GDA.

17 **V. BREACH OF CONTRACT ON NOTES**
18 (b) (Against Defendant GDA)

19 5.1 U.S. Bank realleges paragraphs 1.1 through 4.6 above as if set
20 forth in full herein.

21 5.2 Pursuant to the 2014 Orchard Loan, Term Loan, PIK Interest
22 Loan, 2015 Orchard Loan, and Warehouse Loan, GDA is obligated to pay the
23 Obligations.

24 5.3 GDA failure to satisfy the Obligations under the 2014 Orchard
25 Loan, Term Loan, PIK Interest Loan, 2015 Orchard Loan, and Warehouse Loan
26 constitutes a breach of contract.

5.4 As a direct and proximate result of GDA's breaches, U.S. Bank is entitled to recover from GDA damages in the form of unpaid principal and accrued interest in the following amounts: The principal amount of \$18,585,706.06, plus accrued and unpaid interest as of May 10, 2016, in the amount of \$86,203.23. Interest continues to accrue on and after May 10, 2016, at a rate of \$2,752.10321 per diem.

5.5 Pursuant to the Loan Agreement, 2014 Orchard Loan, Term Loan, PIK Interest Loan, 2015 Orchard Loan, and Warehouse Loan, U.S. Bank is also entitled to recover additional sums, including attorneys' fees and costs, both before and after this complaint is filed, incurred by U.S. Bank in its lending relationship with GDA.

VI. RECEIVERSHIP

(Against GDA and Kernan)

6.1 U.S. Bank realleges paragraphs 1.1 through 5.5 above as if set forth in full herein.

6.2 Each of the GDA Mortgage and the Kernan Mortgage provide that, among other things, U.S. Bank shall have the following as a right and remedy upon the occurrence of an Event of Default:

[U.S. Bank] shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. [U.S. Bank]'s right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by

1 [U.S. Bank] shall not disqualify a person from serving as
2 receiver.

3 (GDA Mortgage at 8; Kernan Mortgage at 6.)

4 6.3 The Security Agreement also contains agreement to
5 appointment of a receiver: "(i) U.S. Bank may have a receiver appointed as a
6 matter of right, (ii) the receiver may serve without bond, and (iii) all fees of the
7 receiver and the receiver's attorneys will become part of the Obligations secured by
8 this Security Agreement and will be payable by GDA on demand by U.S. Bank,
9 with interest at the Default Rate until repaid by GDA; . . . U.S. Bank, either itself
10 or through a receiver, may collect the payments, rent, income, and revenues from
11 the Collateral." (Security Agreement para. 14(d)-(e), at 6.)

12 6.4 This is an action to foreclose upon the liens against the Real
13 Property under the GDA Mortgage and the Kernan Mortgage and the Collateral
14 under the Security Agreement. U.S. Bank's interest in the Real Property and the
15 Collateral is probable. The appointment of a receiver with respect to the Real
16 Property and the Collateral is provided for by the GDA Mortgage, the Kernan
17 Mortgage, and the Security Agreement or is reasonably necessary to enforce the
18 assignment of rents and other revenues from the Real Property and the Collateral.
19 Without the appointment of a receiver over the Real Property and the Collateral,
20 the Real Property, the Collateral, or their revenue-producing potential is in danger
21 of being lost or materially injured or impaired. Appointment of a receiver is
22 reasonably necessary and other available remedies either are not available or are
23 inadequate. Appointment of a receiver is necessary to secure ample justice to the
24 parties.

1 6.5 U.S. Bank is entitled to the appointment of a receiver with
2 respect to all of the Real Property and the Collateral, including but not limited to
3 pursuant to RCW 7.60.005 *et seq.*

4 **VII. PRAYER FOR RELIEF**

5 WHEREFORE, U.S. Bank prays for relief as follows:

6 7.1 That U.S. Bank have judgment against GDA for the following
7 amounts: The principal amount of \$18,585,706.06, plus accrued and unpaid
8 interest as of May 10, 2016 in the amount of \$86,203.23. Interest continues to
9 accrue on and after May 10, 2016, at the rate of \$2,752.10321 per diem.

10 7.2 That U.S. Bank have judgment against GDA for the full amount
11 of U.S. Bank's reasonable fees, costs, and out-of-pocket disbursements, including
12 without limitation attorneys' fees and costs, incurred in U.S. Bank's lending
13 relationship with GDA and pursuing this matter.

14 7.3 That interest be awarded on the entire judgment at the
15 maximum legal rate from the date of judgment until paid.

16 7.4 That in the event of nonpayment of the judgment forthwith
17 upon its entry:

18 (a) That the interest of U.S. Bank in the Real Property
19 and the Collateral be declared a valid lien on the Real Property and the Collateral
20 with priority over the liens and interests of all defendants and anyone claiming by,
21 through, or under them;

22 (b) That the interest of U.S. Bank in the Real Property
23 and the Collateral be foreclosed and sold at one or more foreclosure sales in the
24 manner provided by law, and that the proceeds of the foreclosure sale(s) be
25 distributed to U.S. Bank and applied to the obligations under the Note, together
26 with any additional amounts that U.S. Bank may advance under the terms of the

1 Loan Agreement, 2014 Orchard Loan, Term Loan, PIK Interest Loan, 2015
2 Orchard Loan, Warehouse Loan, GDA Mortgage, Kernan Mortgage, and Security
3 Agreement, together with interest thereon from the date of payment;

4 (c) That by such foreclosure sale(s), the interest of all
5 defendants and persons claiming by, through, or under them, be adjudged inferior
6 and subordinate to U.S. Bank's interest and be forever foreclosed except only for
7 the statutory right of redemption; and

8 (d) That U.S. Bank be permitted to be a bidder for and
9 purchaser of the Real Property and the Collateral, or any part thereof, and that the
10 successful purchaser(s) at the foreclosure sale(s) be permitted to take immediate
11 possession of the property purchased.

12 7.5 That if any deficiency remains after application of the proceeds
13 from any sale of the Real Property and the Collateral, execution be issued for the
14 deficiency against GDA and against any of its property not exempt from execution.

15 7.6 That a receiver be appointed with respect to GDA and Kernan
16 and all of the Real Property and the Collateral, including but not limited to
17 pursuant to RCW 7.60.005 *et seq.*, and on such terms for which good cause may be
18 shown.

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MILLER NASH GRAHAM & DUNN LLP

Attorneys for Plaintiff
U.S. Bank National Association